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**Edward W. Walker**

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AND THE FUTURE OF  
THE RUSSIAN FEDERATION**

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## THE NEW RUSSIAN CONSTITUTION AND THE FUTURE OF THE RUSSIAN FEDERATION

Edward W. Walker

When the USSR fell into a coma in August last year and was removed from its life-support system in December, the West seemed to breathe a sigh of relief. At last the Cold War, pronounced dead on countless previous occasions, was indeed finally over. Even if economic conditions had yet to bottom out, it appeared that a political watershed had been reached and the Great Soviet Drama was over. The implosion of the Soviet state would be followed by a process of state building and regime consolidation that would, it was hoped, bring the fifteen countries emerging from the rubble of the Soviet Union into the "Common European Home."<sup>1</sup>

Unfortunately, rather than abating, the Great Drama has continued—indeed in many respects, it has worsened. Most worrisome for the outside world is the considerable and growing risk of war between the former Soviet republics. Additionally, the former republics are coming under many of the same pressures that destroyed the USSR. This is true above all in Russia, the dominant power and the key to the region's stability. Russia, like Gorbachev's Soviet Union before it, faces a host of

extremely complex and difficult "crises" that took centuries to overcome in the West.<sup>2</sup> These include:

(1) the consolidation of the Russian state in the territorial-juridical sense—that is, the demarcation of the territory over which the Russian state exercises formal sovereignty and which the international community and the Russian peoples call Russia;

(2) the restaffing, restructuring, and in certain respects creation *ex nihilo* of a Russian state in the institutional, Weberian sense—that is, a coherent administrative hierarchy that makes decisions backed by force and a division of responsibilities empowering it to carry out the tasks demanded of a modern state;

(3) the establishment of a rule of law, both in the sense of a non-arbitrary rule-by-law and in the sense of a "law above the state" that constrains even the highest political authorities;

1 Much of the information in this paper was gathered during two trips to Moscow, one in November 1991 and the other in February-March 1992. I am grateful to the University of Chicago's Center for the Study of Constitutionalism in Eastern Europe for sponsoring the trips.

2 See Leonard Binder et al. (eds.), *Crises and Sequences in Political Development* (Princeton: Princeton University Press, 1971).





(4) the transition to a private-enterprise, market economy and the building of the public and private institutional infrastructure capable of sustaining a market economy;

(5) the consolidation of democracy.

Each of these crises is at issue in the struggle underway in Moscow over the adoption of a new constitution for the Russian Federation. Either directly or indirectly, this struggle touches on the distribution of political power in the emerging political order, the territorial integrity of "Russia," the consolidation of democracy, and the future of Russia's economic reforms.<sup>3</sup>

## THE EFFORT TO ADOPT A NEW RUSSIAN CONSTITUTION

Following the partially competitive elections to the newly created RSFSR Congress of People's Deputies in March 1990, the Congress issued a Declaration of Sovereignty for the RSFSR on June 12, 1990.<sup>4</sup> The Congress then established a Constitutional Commission to prepare a new constitution codifying Russia's sovereignty and offering broader protections for individual liberties. The Commission, which was made up of 102 deputies, was chaired by Boris Yeltsin, with Ruslan Khasbulatov as its vice-chairman.<sup>5</sup> Given the Commission's unwieldy size, a Working Group was established of some fifteen Supreme Soviet deputies and a roughly equal number of experts, under the chairmanship of Oleg Rumyantsev.<sup>6</sup> The Working Group convened late in the summer of 1990 and completed an initial draft in November.<sup>7</sup>

The critical points in the November draft were first, the assertion that "the Russian Federation is a

sovereign, democratic, social and lawful state of historically united peoples" (Art. 1), and second, the statement that "the highest value in the Russia Federation is afforded the individual, his/her life, honor, dignity and freedom, personal immunity and other natural and inalienable rights" (Art. 1.3). However, it also provided for extensive collective rights and welfare guarantees, specifying that Russia would be a "social state" that "bases its activity on the principles of social democracy and justice" (Art. 8. 1). Nevertheless, the draft came under immediate fire from conservatives for being anti-Soviet, anti-Communist, and anti-Union, and as a result, the Supreme Soviet decided not to put its adoption on the agenda of the Second Congress of People's Deputies. Then, against the background of the conservative mobilization of late 1990-early 1991, the hard-line Communists of Russia prepared a competing draft.<sup>8</sup> A compromise draft was subsequently hammered out, but by the time it came up for discussion at the Fourth Congress in April 1991, the political tide had changed once again in Russia: the March 17, 1991 referendum establishing the post of a Russian president; the splintering of the Russian Communist Party; and Yeltsin's victory in the presidential election of June 12, 1991. Accordingly, the Congress rejected the compromise draft in June 1991 for failing to strengthen Russia against the Soviet center and on the grounds that it was replete with contradictions. The Constitutional Commission was consequently instructed to prepare another draft, which would be taken up at the next Congress that fall.<sup>9</sup>

The failure of the August coup brought a new urgency to the drafting of the constitution. The RSFSR's existing constitution had been adopted in April 1978 pursuant to the USSR's "Brezhnev Constitution" of 1977 and was inextricably associated with the *ancien régime*.<sup>10</sup> Additionally, it was en-

3 Anyone writing about the former Soviet Union faces a considerable difficulty over choice of names. For example, the former Russian Soviet Federal Socialist Republic (RSFSR) was renamed "the Russian Federation" by the RSFSR Supreme Soviet last December. However, the RSFSR's Constitutional Court refused to sanction the change because the old wording was codified in the existing constitution. When the Congress convened this past April, however, it was unable to settle on a single name for the country, with the result being that formally the country is now called "the Russian Federation (Russia)." The practice adopted in this paper is to use the name current at the time under discussion.

4 See Charles F. Furtado, Jr. and Andrea Chandler (eds.), *Perestroika In the Soviet Republics: Documents on the National Question* (Boulder: Westview Press, 1992), pp. 325-26.

5 Yeltsin remained the chairman and Khasbulatov the vice-chairman even after Yeltsin became president in the summer of 1991. Yeltsin's reluctance to give up his posts in the legislature has caused some concern among Supreme Soviet deputies who feel he is thereby undermining Russia's separation of powers.

6 Rumyantsev's formal title is secretary of the Constitutional Commission. He is also a leading figure in the Russian Social Democratic Party and a member of the Parliamentary Group for the Regulation of Federation Relations Within Russia.

7 *Argumenty i fakty*, no. 47, 1990, republished with comments in *Konstitutsiya Rossiyskoy Federatsii. Proekt s kommentariyami* (Moscow-Krasnoyarsk, 1991).

8 *Sovetskaya Rossiya*, April 19, 1991. Another alternate draft was prepared by a group of legal scholars from the Saratov Law Institute.

9 *Sovetskaya Rossiya*, June 7, 1991.

10 It has been called a "hurriedly-redecorated Brezhnev Constitution" by one critic (*Moscow News*, no. 16, 1992, p. 6).



tirely anomalous substantively, making the task of the Constitutional Court all but impossible.<sup>11</sup> With the coup's failure, the draft by the Communists of Russia became a dead letter, and the Constitutional Commission, no longer constrained by Soviet law, felt confident they would at last be able to draft a constitution with strong individual protections for a post-Soviet, democratic Russia.

The result was the Constitutional Commission's second draft, which was presented by Rumyantsev to the RSFSR Supreme Soviet on October 10, 1991.<sup>12</sup> The hope and expectation of the constitution's supporters was that the Supreme Soviet would put the adoption of the Commission's draft on the agenda of the Fifth Congress, scheduled to open later that month. Indeed, by then many previously controversial provisions were no longer at issue (e.g., provisions on individual rights and civil liberties, civil society, and judicial reform). However, provisions on executive-legislative relations, the division of powers between the central government and the federation's constitutive elements, and on the number of representatives that the various administrative units within the Federation would have in the central parliament proved highly contentious. As a result, putting the new constitution on the Congress's agenda for approval failed to win the necessary majority in the Supreme Soviet.<sup>13</sup> Therefore, the Constitutional Commission convened on October 23 and voted to authorize Yeltsin to present a slightly revised draft to the Congress "for discussion" (although not for adoption).<sup>14</sup> This he did, and the Congress then passed a resolution instructing the Constitutional Commission to prepare yet another draft for consideration at the Sixth Congress, scheduled for the spring.<sup>15</sup>

Prospects for the Commission's draft seemed to dim in the following months. Rejected by most of the parliaments in the autonomous republics for failing to recognize their sovereign status, it also met with objections from many governments in the RSFSR's *oblasts*, *krais*, and autonomous *okrugs*, because of what they felt were the excessive privileges afforded the republics.<sup>16</sup> Nevertheless, the Working Group continued to seek a compromise that would be acceptable to Yeltsin, the Russian Parliament, and the local governments. The result was the preparation of the March 2, 1992 draft (the Commission's third) which, after revisions based on review and comments by Supreme Soviet deputies, was published on March 12.<sup>17</sup> The sponsors of the draft hoped that the Supreme Soviet would put the new constitution on the agenda of the Sixth Congress, scheduled to open April 6.

The supporters of the Commission's draft received some very encouraging news that same week. On March 13, Yeltsin convinced representatives of eighteen of the twenty republics to initial a Federation Treaty.<sup>18</sup> On March 19, a separate agreement was initiated by representatives of the Federation's *oblasts* and *krais*, which was followed by another agreement with the autonomous *okrugs* and the Jewish Autonomous Oblast. Finally, on March 31, the Federation Treaty was formally signed by Yeltsin, Khasbulatov, and representatives of the eighteen republics.<sup>19</sup> Most surprisingly, the Republic of Bashkortostan signed after a last minute agreement on the republic's right of ownership to the natural resources on its territory, freedom to engage directly in foreign economic transactions, and independent taxation.<sup>20</sup>

11 For example, it stated in its preamble that the RSFSR Supreme Soviet was committed to keeping the RSFSR within the USSR. (Language describing Russia as part of the USSR was finally removed from the constitution at the April 1992 Congress, but only after several earlier votes had failed to receive the necessary two-thirds majority needed to amend the constitution.) Another example was the assertion that labor collectives were committed to "developing socialist competition, aiding the dissemination of leading methods of work, strengthening of labor discipline, training their members in the spirit of communist morality, and dedicated themselves to increasing their political consciousness, culture, and professional qualifications" (Sec. 1, Art. 2). Thus, it is no wonder that the Constitutional Court has supported the adoption of a new constitution. (See the interview with the Court's chairman, Valery Zorkin, in *Moscow News*, no. 6, p. 16.)

12 Rumyantsev's speech, "Zachem nuzhna novaya konstitutsiya" is reprinted in *Konstitutsionnyi vestnik*, no. 8 (1991), pp. 3-7. The draft is in *Rossiyskaya gazeta*, October 11, 1992, pp. 3-7.

13 The proposal needed approval of 50 percent of the total deputies but received only 46.1 percent because over 100 deputies were absent at the time—only 11.8 percent voted against the proposal (*Konstitutsionnyi vestnik*, no. 8, pp. 68-72).

14 See *ibid.*, p. 74, and *ibid.*, pp. 84-148 for the October 24, 1991 draft.

15 See "Text" of Report on Draft Constitution Delivered by Boris Yeltsin to the Russian Soviet Federated Socialist Republic (RSFSR) Congress of People's Deputies, *Tass International*, November 2, 1991, reprinted in *FBIS-SOV*, November 4, 1991, pp. 56-59.

16 *Moscow News*, no. 7, 1992, p. 7.

17 *Argumenty i fakty*, March 12, 1992.

18 The treaty initiated by the republics on March 13 is in *Rossiyskaya gazeta*, March 18, 1992; reprinted in *The Current Digest of the Soviet Press* (hereafter *CDSP*), vol. 44, no. 13, pp. 15-16.

19 Thus, the Russian Federation is a separate signatory to the treaty, a rather ironic development given that Yeltsin and other champions of the sovereignty of the Union Republics had opposed allowing the USSR Parliament or government to be a signatory to the Union Treaty being negotiated in early 1991 for the USSR.

20 Earlier, the Bashkortostan Parliament had voted to suspend the jurisdiction of the Constitutional Court on its territory (*Moscow News*, no. 16, p. 5).



Other developments were less auspicious, however. First, Tatarstan and Chechnya refused to initial the treaty. In Chechnya, the quasi-fascist president, Dzhokar Dudayev, continued to insist on full independence and threatened "Holy War" should the Russian government resist. Even more disappointing was the approval of Tatarstan's ambiguously-worded, March 21 referendum on sovereignty/independence. Contrary to the expectations of many Moscow observers, and despite the fact that the referendum had been declared illegal by the Constitutional Court and Yeltsin had issued numerous appeals to reject it, the referendum was approved by 61.4 percent of those who voted. In addition, the Constitutional Commission's draft met with opposition from two alternative drafts, the first drawn up by a group of legal experts associated with Anatoly Sobchak, Mayor of St. Petersburg, and the second by Yeltsin's legal advisor, Sergey Shakhrai.<sup>21</sup> Sobchak presented his draft to the public on March 30.<sup>22</sup> Yeltsin, however, kept his draft close to his chest amidst rumors that he would dissolve Parliament and put his own draft to a national referendum should the Congress bring down the government or sharply curtail his powers.<sup>23</sup>

The signing of the Federation Treaty, Moscow's apparent willingness to allow Chechnya to go its own way, and the initiation of bilateral negotiations between Moscow and Tatarstan have, at least temporarily, defused the "federation structure" issue. As a result, debate at the April Congress focused on the government's economic reforms, executive-legislative relations, and the future of the Commonwealth of Independent States (CIS). Politically, the session represented a modest victory for Yeltsin. The Congress decided against calling for a vote of no-confidence in the government and approved (after much controversy) Yegor Gaidar's economic

reform program. Most importantly, it upheld Yeltsin's right to rule by decree through the end of 1992. Yeltsin in turn was forced to agree to step down as prime minister in July, to retreat slightly on the ruble stabilization plan, and to reshuffle his cabinet.<sup>24</sup> As for the constitution, the Supreme Soviet this time agreed to put it on the agenda and recommended that it be adopted at its first reading, thereby avoiding prolonged debate over individual provisions. However, when the Congress took up the new constitution, it rejected the Sobchak and Communist drafts but merely approved the "general concept" of the Commission's draft, calling once again for further revisions by the Constitutional Commission. In its stead, numerous amendments were made to the existing constitution, including the incorporation of the Federation Treaty.<sup>25</sup>

Thus, the controversies raised by the new constitution were hardly resolved at the Congress and promise to remain at the center of the political struggle in Moscow in the months to come. Although there are still some objections to the provisions on individual liberties and civil society, the principal sticking points are the federation structure and executive-legislative relations.

## THE FEDERATION STRUCTURE

The RSFSR was established immediately after the Revolution. Although it was an original signatory to the USSR's 1922 Union Treaty, the RSFSR's constitutive elements never signed a separate union treaty. Nevertheless, by 1989 a federation structure had emerged that, in addition to forty-nine oblasts and six *krais* in "Russia" proper, consisted of thirty-one constitutive "autonomous" areas, including

21 Rumors circulated in Moscow of numerous other drafts, including a revised version of the Communists of Russia draft of last year (*Moscow News*, no. 12, 1992, p. 6). When the Congress finally convened, however, it discussed only the Romyantsev draft, the Sobchak draft, and two Communist drafts (*RFE/RL Daily Reports*, April 21, 1992).

22 For Sobchak's views on the failings of the Romyantsev draft, see *Nezavisimaya gazeta*, March 28, 1992. Curiously, Sobchak's criticism stresses its "socialist" character, particularly the section on "civil society" (Section 3). The drafters are actually rather proud of this section, not only because they see it as innovative, but also because it reflects the country's need to break decisively with its totalitarian past.

23 Like Sobchak, Yeltsin has suggested that the Romyantsev draft is excessively "socialist" (*Nezavisimaya gazeta*, March 28, 1992, p. 1), despite the fact that he is the chairman of the Constitutional Commission and has defended it in the past (see, for example, "Text" of Report, p. 57). Yeltsin may have prepared his own draft in an effort to pressure the Congress and threaten it with dissolution should it prove too unruly. Several days before the Congress opened, this pressure was stepped up when Yeltsin supporters convened an Assembly of Citizens at which many speakers demanded that the Congress be dissolved and that the Yeltsin Constitution be put to a national referendum. Delegates to the Congress responded by adopting a resolution calling on the Procurator's Office to launch an investigation of those making these proposals because they allegedly violated constitutional provisions against public appeals for the overthrow of the regime. For an article representative of the Parliament's view that the Yeltsin and Sobchak drafts would create "presidential dictatorships," see *Rossiyskaya gazeta*, April 3, 1992, pp. 1-2.

24 See Alexander Rahr, "Winners and Losers of the Russian Congress," *RFE/RL Research Reports*, vol. 1, no. 18 (May 1, 1992), pp. 1-7.

25 For a summary of these changes, see Boris Pugachov, "Government Will Choose Parliamentary Republic After Adopting Amendments to New Constitution," *Izvestiya*, April 14, 1992, translated in *FBIS-SOV*, April 15, 1992, pp. 35-36. Pugachov claims that as a result of these and other post-October 1989 amendments, "virtually 100 articles of the constitution have been replaced." He also refers to the package of amendments adopted at the Congress as the "Khasbulatov" Constitution.



sixteen autonomous republics, five autonomous *oblasts*, and ten autonomous *okrugs* (Table 1). Located in four broad regions (the North Caucasus, the central Volga-Urals region, along the border with Mongolia, and, with one major interruption, along the northern rim of the country running from Karelia in the west to the Chukchi Autonomous Okrug in the east), these thirty-one autonomies had been granted formal autonomy on the basis of their ethnic distinctiveness. Although the RSFSR's administrative divisions may have reflected ethnic divisions reasonably well when originally defined, by 1989 demographic shifts and arbitrary border changes meant that the titular peoples were a majority in only eight of the thirty-one autonomies, while Russians were a majority in eighteen (Table 1). Moreover, while they constituted over half the territory of the RSFSR, only some 15 percent of the population resided in the autonomies. Nor did all of Russia's minorities live in the autonomies. According to the 1989 census, the RSFSR had a population of 147.4 million, 81.5 percent of which were ethnic Russians, with the thirty-eight officially-recognized ethnic minorities making up the remaining 18.5 percent (Table 2).

By the fall of 1991, the ethnic-administrative legacy and the particular dynamics of the collapse of the USSR had unleashed serious separatist pressures in Russia. These pressures had first manifested themselves in early 1990 when Yeltsin, who was then attempting to build an independent political base in the RSFSR from which he could challenge Gorbachev and the old center, declared his support not only for Russian sovereignty but for the renegotiation of relations between the RSFSR's central government and its autonomies. Indeed, Yeltsin called for a radically new approach to sovereignty in which "the lowest government unit closest to the people in villages or towns delegates power to the next highest level, then to the republic parliament, then to the national parliament, not what we had before when the national level decided...."<sup>26</sup>

Yeltsin won a seat in the March elections as a delegate to the new RSFSR Congress of People's Deputies and was then elected (albeit with considerable difficulty) chairman of the new Parliament. With Yeltsin's encouragement, the Congress issued the RSFSR's Declaration of State Sovereignty on June 12, 1990. The Declaration asserted that the RSFSR had "complete authority... in resolving all questions relating to state and public life with the exception of those which it voluntarily hands over to USSR jurisdiction," and proclaimed the "primacy of the RSFSR Constitution and RSFSR laws throughout the territory of the RSFSR." At the same time, it stipulated that the "Congress of People's Deputies confirms the need to broaden substantially the rights of autonomous republics, autonomous *oblasts*, autonomous *okrugs*, along with RSFSR *krais* and *oblasts*."<sup>27</sup> Less than two months later, the Autonomous Republic of Karelia issued a sovereignty declaration (August 10, 1990). This was followed by sovereignty declarations from every other autonomous republic within the RSFSR.

From the summer of 1990 through the end of 1991, Yeltsin was preoccupied by his intensifying struggle with Gorbachev, the Communist Party, and the Soviet center. Needing the backing of the autonomies, he repeatedly promised support for their sovereignty and autonomy demands. Most notably, during a three-week trip around the RSFSR in August and September 1990 that took him to Tatarstan, Bashkiria, and the Komi Autonomous Republic, Yeltsin told local elites to "take all the sovereignty you can swallow," although he added they would be better off sticking with the RSFSR government in opposition to Gorbachev and the old center.<sup>28</sup> His position began to change, however, after he entered into serious negotiations with Gorbachev over a new USSR Union Treaty late in April 1991 (the Novo-Ogaryovo process). By then, the autonomies had begun demanding enhancement of their status (that is, from autonomous republics to full union republics, and from autonomous *oblasts* and autonomous *okrugs* to autonomous republics). Moreover, the autonomous republics insisted on

26 Quoted in *New York Times*, May 31, 1990. The political scientist Andranik Migranyan rather presciently described the danger this doctrine posed to Russia: "Our attempts to create all state institutions from scratch on a contractual basis are attempts to put into effect yet another grandiose utopia... the bomb planted under the USSR by the declaration of Russian sovereignty is, it seems to me, facilitating not only the destruction of the USSR but also—to an even greater extent—the destruction of Russia itself.... Where are the geographical boundaries of the republic that is supposed to represent ethnic Russians?" ("An Indissoluble Union," *Izvestiya*, September 20, 1990, translated in CDSP, vol. 42, no. 39, p. 2).

27 Furtado and Chandler, op. cit., pp. 325, 326. The status of the autonomies was already controversial, as this rather vague wording suggests. See also *Izvestiya*, June 12, 1990, translated in CDSP, vol. 42, no. 23, p. 14.

28 *New York Times*, September 2, 1990. *New York Times* reporter, Bill Keller, accompanied Yeltsin on his trip. He reported that Yeltsin had made clear his willingness to give the autonomies ownership of the natural resources in their territories, with the RSFSR to obtain revenue through taxation (see his article in *New York Times Sunday Magazine*, September 23, 1990).



Table 1. Populations of the Autonomous Areas of the RSFSR (1989)

|                               |                  | Percentage of Population |          |
|-------------------------------|------------------|--------------------------|----------|
|                               |                  | Peoples                  | Russians |
| <b>ASSRs (16)</b>             |                  |                          |          |
| Bashkiria                     | Bashkirs         | 21.9                     | 39.3     |
| Buryatia                      | Buryats          | 24.0                     | 70.0     |
| Checheno-Ingushetia           | Chechens, Ingush | 57.8                     | 23.1     |
| Chuvash                       | Chuvash          | 67.8                     | 26.7     |
| Dagestan                      | Avars            | 27.5                     | 09.2     |
|                               | Agul             | 00.8                     |          |
|                               | Dargins          | 15.6                     |          |
|                               | Kumyk            | 12.9                     |          |
|                               | Lak              | 05.1                     |          |
|                               | Lezgins          | 11.3                     |          |
|                               | Nogai            | 01.6                     |          |
|                               | Rutuls           | 00.8                     |          |
|                               | Tabasarans       | 00.3                     |          |
| Kabardino-Balkar              | Kabards          | 48.2                     | 32.0     |
|                               | Balkars          | 09.4                     |          |
| Kalmyk                        | Kalmyks          | 45.4                     | 37.7     |
| Karelia                       | Karelians        | 10.0                     | 73.6     |
| Komi                          | Komi             | 23.3                     | 57.7     |
| Mari                          | Mari             | 43.3                     | 47.5     |
| Mordivian                     | Mordivians       | 32.5                     | 60.8     |
| North Ossetia                 | Ossetians        | 53.0                     | 29.9     |
| Tatar                         | Tatars           | 48.5                     | 43.3     |
| Tuva                          | Tuvinians        | 64.3                     | 32.0     |
| Udmurtia                      | Udmurts          | 30.9                     | 58.9     |
| Yakutia                       | Yakuts           | 33.4                     | 50.3     |
|                               |                  |                          |          |
| <b>Autonomous Oblasts (5)</b> |                  |                          |          |
| Adyge                         | Adygei           | 22.1                     | 68.0     |
| Gorno-Altai                   | Altai            | 31.0                     | 60.4     |
| Jewish                        | Jews             | 04.2                     | 83.2     |
| Karachai-Cherkess             | Karachai         | 31.2                     | 42.4     |
|                               | Cherkess         | 09.7                     |          |
| Khakass                       | Khakass          | 11.1                     | 79.5     |
|                               |                  |                          |          |
| <b>Autonomous Okrugs (10)</b> |                  |                          |          |
| Aga Buryat                    | Buryats          | 54.9                     | 40.8     |



**Table 1. Populations of the Autonomous Areas of the RSFSR (1989)**

|                   |               | Percentage of Population |          |
|-------------------|---------------|--------------------------|----------|
|                   |               | Peoples                  | Russians |
| Chukchi           | Chukchi       | 07.3                     | 66.1     |
| Evenki            | Evenks        | 14.0                     | 67.5     |
| Komi-Permyak      | Komi-Permyaks | 60.2                     | 36.1     |
| Koryak            | Koryaks       | 16.5                     | 62.0     |
| Khanty-Mansi      | Khant         | 0.9                      | 66.3     |
|                   | Mansi         | 0.5                      |          |
| Nenets            | Nenets        | 11.9                     | 65.8     |
| Taimyr            | Dolgans       | 8.9                      | 67.1     |
|                   | Nenets        | 4.8                      |          |
| Ust-Orda Buryatia | Buryats       | 36.3                     | 56.5     |
| Yamal-Nenets      | Nenets        | 4.2                      | 59.2     |

Source: 1989 census in *Argumenty i fakty*, no. 13 (March 1991), p. 1; translated in *CDSP*, vol. 43, no. 21 (June 26, 1991), pp. 8-9.

Note: Many of the former autonomies have since renamed themselves. The signatories to the Federation Treaty were the SSR of Adyge, the Republic of Bashkortostan, the Buryat SSR, the Republic of Gornyi Altay, the Republic of Dagestan, the Kabardino-Balkar Republic, the Republic of Kamykia-Khalmg Tangch, the Republic of Rarachayevo-Cherkesiya, the Republic of Karelia, the Komi SSR, the Republic of Mariy-El, the Mordva SSR, the North Ossetian SSR, the Republic of Sakha (Yakutia), the Republic of Tuva, the Udmurt Republic, the Republic of Kharasiya, and the Chuvash Republic. Refusing to sign were the Republic of Chechnya and the Republic of Tatarstan.

**Table 2. Nationality Groups in the RSFSR (1989)**

| Nationality Group | Population  | Percentage of Total |
|-------------------|-------------|---------------------|
| Russians          | 119,865,946 | 81.5                |
| Tatars            | 5,522,096   | 03.8                |
| Ukrainians        | 4,362,872   | 03.0                |
| Chuvash           | 1,773,645   | 01.2                |
| Bashkirs          | 1,345,273   | *                   |
| Belorussians      | 1,206,222   | *                   |
| Mordvinians       | 1,072,939   | *                   |
| Chechens          | 898,999     | *                   |
| Germans           | 842,295     | *                   |
| Udmurts           | 714,833     | *                   |
| Mari              | 643,698     | *                   |
| Kazakhs           | 635,865     | *                   |
| Jews              | 536,848     | *                   |
| Armenians         | 532,390     | *                   |
| Buryats           | 417,425     | *                   |



Table 2. Nationality Groups in the RSFSR (1989)

|                        |                    |   |
|------------------------|--------------------|---|
| Ossetians              | 402,275            | * |
| Kabardinians           | 386,055            | * |
| Yakuts                 | 380,242            | * |
| Darginians             | 353,348            | * |
| Komi                   | 336,309            | * |
| Azerbaijanis           | 335,889            | * |
| Kumyks                 | 277,163            | * |
| Lezginy                | 257,270            | * |
| Ingush                 | 215,068            | * |
| Tuvinians              | 206,160            | * |
| Peoples of the North** | 181,517            | * |
| Moldavians             | 172,671            | * |
| Kalmyks                | 165,821            | * |
| Gypsies                | 152,939            | * |
| Karachayevtsy          | 150,332            | * |
| Komi-Permyaki          | 147,269            | * |
| Georgians              | 130,688            | * |
| Uzbeks                 | 126,899            | * |
| Karelians              | 124,921            | * |
| Adygeitsy              | 122,908            | * |
| Koreans                | 107,051            | * |
| Laks                   | 106,245            | * |
| Others                 | 1,811,483          | * |
| <b>TOTAL</b>           | <b>147,021,869</b> |   |

Source: 1989 census, *Vestnik statistiki*, no. 7 (1990), pp. 72-75.

\* Less than 1 percent of total population.

\*\*Nentsy, Evenky, Khanty, Eveny, Chukchi, Nanaitzy, Koryaki, Mansi, Dolgany, Nivkhi, Selkupy, Ulchi, Itelmeny, Ugegeitsy, Saami, Eskimos, Chuvantsy, Nganasany, Yukagiry, Kety, Orochi, Tafalapy, Aleuts, Negigaltsy, Yentsy, Oroki.

being full signatories to the USSR Union Treaty. Hoping to maintain a united front against the center, Yeltsin resisted these demands even as Gorbachev and Soviet conservatives encouraged the localities to intensify their challenge to the Russian government. With great difficulty, a compromise was worked out at a May 12, 1991 meeting between Yeltsin, Gorbachev, and the heads of the Supreme Soviets of fourteen of the fifteen RSFSR autono-

mous republics. The sovereignty of the autonomous republics was reaffirmed, and it was agreed that they would sign the Union Treaty both as a member of the USSR and the RSFSR.<sup>29</sup> Nevertheless, several autonomies refused to allow voting to take place on their territories during the RSFSR presidential elections in June.

Relations between the RSFSR government and the autonomies deteriorated further after the failed

29 *Izvestiya*, May 13, 1991, translated in *CDSP*, vol. 43, no. 19, p. 1. The agreement would make it all the more difficult for Yeltsin to resist the sovereignty and autonomy demands of the republics after the USSR's collapse.



August coup. Many local leaders had seemed to side with putschists by refusing to obey Yeltsin's decrees during the crisis. This confirmed the fears of Moscow democrats that an alliance was forming between the local *nomenklatura* and Soviet conservatives. As a result, on August 26, 1991, Ruslan Khasbulatov, Yeltsin's replacement as RSFSR Supreme Soviet chairman, warned that Moscow might dissolve the legislatures in those autonomies that had supported the coup, specifically citing Tatarstan, Checheno-Ingushetia, and North Ossetia. Not coincidentally, these three republics were among the most vocal advocates of sovereignty and autonomy.

The failure of the Novo-Ogaryovo process and the effort to preserve the Union increasingly convinced local officials that the principal challenge to their power and local autonomy came from Yeltsin and democrats in the Russian government. These concerns came to a head in October and November when Yeltsin responded to the arrival in power of radical nationalists in Checheno-Ingushetia by declaring a state of emergency and ordering the dispatch of troops to the rebellious autonomous republic to enforce the Russian Constitution. Although Yeltsin quickly reversed these decisions, officials in the autonomies saw them as a challenge to their sovereignty.

In addition to the hot spots in Tatarstan, Checheno-Ingushetia, and North Ossetia, separatist movements had gathered force elsewhere as well.<sup>30</sup> In Bashkiria, nationalists were watching closely the developments in neighboring Tatarstan; in Karelia, there was talk of reunification with Finland; in Kaliningrad, independence and/or reunification with Germany was being discussed; in Tuva, poor relations between the Tuvinians and local Russians, exacerbated by anti-Russian rioting in 1990,

contributed to increasing pressure for secession. More serious still was the emergence of a number of regional separatist movements, with 1991 witnessing the formation of the Republic of the Mountain Peoples of the North Caucasus, growing demands for Siberian autonomy, and even talk of independence.<sup>31</sup> In contrast, some autonomies seemed on the verge of disintegration, while elsewhere serious border disputes surfaced.<sup>32</sup> Complicating all this for Moscow were the demands of many displaced peoples pressing either for their own autonomous territories or for permission to return to their traditional homelands, demands that often included requests for financial support or compensation from the state.<sup>33</sup> And finally, there were the vexing problems of the Russian diaspora and Russian irredentist claims on the Crimea, parts of eastern Ukraine, and Kazakhstan.<sup>34</sup>

It was against this background that the drafters of the new constitution took up the question of the federation structure in the wake of the failed coup. The drafters had to decide not only the division of powers between the center and the localities, but also just what the localities should be. In practice, this meant determining (1) whether the constitutive elements of the federation should be the existing or new administrative units; (2) whether these constitutive units should be equal in local autonomy and in representation at the center, or whether distinctions should be made on the basis of size of population or ethnicity; and (3), whether the existing administrative units should be redrawn without regard to ethnic distinctiveness in an effort to promote a non-ethnic, political consciousness of "Russia." In short, they faced a huge redistricting dilemma, with debate focusing on whether to commit Russia to what they called "ethnic" or "territorial" federalism.<sup>35</sup>

30 For an overview, see *Moscow News*, no. 14, 1992, p. 8.

31 There are movements calling for the establishment of a Volga-Urals republic uniting Tatarstan and Bashkortostan; a Finno-Ugric republic uniting the Komi, Udmurt, Mari-El, and Mordvinian republics; a Central-Urals Republic of Russians; and a Far Eastern Republic. Most developed was the Confederation of Mountain Peoples, which had established confederate bodies, including a parliament that recently called for the formation of a separate militia.

32 For example, separate Karachai, Cherkess, Abazza, Zelenchuk-Urup Cossack, and Batalpasha Cossack republics were declared in Karachai-Cherkessiya republic over the course of 1991 (*Moscow News*, no. 1, 1992, p. 8; *ibid.*, no. 8, 1992, p. 5; and *ibid.*, no. 15, p. 5). In Dagestan, with its extremely complex ethnic make-up, territorial disputes were intensifying between the Kumyks, the Chechen-Akkins, the Avars, the Laks, and local Cossacks (*Moscow News*, no. 2, 1992, p. 8). Indeed, the entire North Caucasus has become a cauldron of ethnic tensions aggravated by the warrior traditions of the mountain peoples of the region and the local Cossacks. As for border disputes, there are Ingush claims on the Prigorodny district of North Ossetia; South Ossetia is hoping to leave Georgia and unite with North Ossetia; the Kalmyks have claims on Astrakhan and part of Dagestan; there are Tuvinian claims on Krasnoyarsk Krai and Mongolia; and finally, Tatar nationalists have demanded the return of Astrakhan, parts of Kazakhstan, and indeed all of what was once the Kazan Khanate.

33 These include, *inter alia*, the Volga Germans, the Kalmyks, the Chechen-Akkin, the Avars, the Ossets of South Ossetia, and the Kurds of the North Caucasus.

34 According to the 1989 census, there were 25,289,000 Russians living in the non-Russian former Union republics, including 11 million Russians in Ukraine (22 percent of population) and 6.5 million in Kazakhstan (38 percent of population, about the same as the Kazakh population). In many cases, these Russians have been confronted with rising anti-Russian sentiments and discriminatory laws. At the moment, the most serious problems are in the Transdnestr region of Moldova, the Crimea, and the Baltics.



Rumyantsev and most of the Constitutional Commission's Working Group were committed to the territorial principle.<sup>36</sup> A country as large and ethnically diverse as Russia, they believed, could neither remain united nor sustain democracy if administrative divisions reinforced ethnic consciousness. They also recognized, however, that the massive redistricting required by the territorial principle would raise enormous political problems. In the first place, the peoples of the former Soviet Union had long been taught that "bourgeois" territorial federalism ignored ethnic distinctiveness and was less just than "socialist" federalism, which recognized the collective rights of ethnic communities. Second, any redistricting plan would threaten the political influence of powerful interests. Ethnic groups possessing administrative territories would resist any changes that would deny them that privilege. Local officials would resist changes that threatened their posts. And even many non-titular peoples in the former autonomies (e.g., the Russians, especially where they constituted a substantial majority, as in Karelia) would resist redistricting that threatened their autonomy and weight at the center.

A second and related problem of principle was whether to commit to a "compact" or a "national" constitution. At issue here was (1) should the constitution be preceded by a negotiated Federation Treaty; (2) should the autonomies be given the right to ratify or reject the constitution, and if so, under what conditions; (3) should "sovereignty" rest with the center or with the localities (e.g., should republic constitutions be compatible with the Russian Constitution, or vice versa); and finally (4) should secession be a matter for the voters in the constitutive units or should it require approval by the federal Parliament or a nationwide referendum.<sup>37</sup>

Once again, the drafters were committed to a national constitution. They, therefore, opposed any effort to sign a Federation Treaty that might suggest that the federation was temporary and that the

constitutive units had the right to reject the constitution or to secede. However, they recognized that political realities would make full commitment to a national constitution impossible.

The Constitutional Commission attempted to arrive at a compromise in their October draft, which provided for only two types of constitutive units: "republics" and "zemli" (literally, lands). The twenty republics were to be ethnically-based, consisting of all sixteen former autonomous republics and four of the five former autonomous *oblasts* (the exception was the Jewish Autonomous Oblast in the Far East). The *zemli* were to be approximately equal in number and non-ethnically based, which would require a considerable consolidation of existing *oblasts*, *krais*, and autonomous *okrugs*. The republics and *zemli* would each have three representatives in the Federation Assembly, one of two houses in the future Parliament, an arrangement which would give the lightly-populated republics disproportionate weight at the center. The republics would also receive additional local powers, although the drafters hoped to limit these "powers" to largely symbolic matters.<sup>38</sup>

As might have been expected, this scheme proved highly controversial at the Supreme Soviet session of October 10, 1991, and during the discussion of the draft constitution at the Fifth Congress. In particular, representatives of the former autonomous republics objected to having only equal representation to the *zemli* in the Federation Assembly.

In view of these objections, the drafters concluded that the political problems raised by massive redistricting were insurmountable. Thus, they abandoned the *zemli* scheme in the March draft, returning essentially to the existing administrative units. According to Section 4 of the March draft, the constitutive units of the new federation are republics, *oblasts* and *krais* (with Moscow and St. Petersburg being named distinct constitutive elements with the status of *oblasts*), and autonomous *oblasts*

35 I should stress that this is their language. In fact, it is difficult to imagine a federalism that is not "territorial" (although recently some ethnic groups in Russia have demanded non-territorial "autonomy" and constitutional recognition—something that might be better called "ethnic corporatism"). Logically, then, the preferred language would simply be "ethnic" and "non-ethnic."

36 For a sample of Rumyantsev's views on this question, see his interview in *Moscow News*, no. 10, 1991, p. 5.

37 As this list of options suggests, the "federation"/"confederation" distinction is rather inadequate. At the least, they should be treated as polar opposites, not contradictions—that is, there is a large intermediate ground between pure federation and pure confederation.

38 On the reasoning behind the *zemli* scheme, see "Poyasnitel'naya zapiska k projektu konstitutsii Rossiyskoy federatsii," *Rossiyskaya gazeta*, October 11, 1991. Rumors circulated at the time about numerous maps drawn up by the Commission of different redistricting schemes, something that caused considerable consternation among local officials worried about losing their positions and ethnic groups worried about losing administrative recognition. For an even more radical scheme, see the interview with Moscow Mayor Gavril Popov in *Izvestiya*, October 3, 1991, in which he argued that Russia should be divided into 10-15 large *zemli* without any regard to ethnicity, citing U.S. federalism as a model. Yeltsin called this scheme "erroneous" and indicated that he was "categorically opposed" to it in his November 2, 1991 speech at the Fifth Congress ("Text of Report," p. 58).



and autonomous *okrugs* (Art. 77.1). Any change in the legal rights of the constitutive elements requires approval by a two-thirds majority in an all-federation referendum as well as confirmation by the federal Parliament (Art. 77.2). Secession is possible only through an all-federation referendum (Art. 78.2). Redistricting requires agreement between the affected parties and approval by the federal Parliament (Art. 78.4). Republics, *oblasts*, *krais*, and autonomous *oblasts* have two representatives each in the Federation Assembly, while the autonomous *okrugs* have one each (Art. 87.3).<sup>39</sup> The republics, however, "possess the full totality of state powers" except those delegated to the center (Art. 81.1), while the *oblasts*, *krais*, and autonomous *oblasts* have all those powers except those specifically cited as belonging to the center in Articles 79 and 80 (Art. 81.2). These powers include the right to "establish the legal basis for a single market; financial-monetary, credit, and customs regulation; monetary policy and the bases for price policy (*osnovy tsenovoy politiki*); a central banking system; a federal budget; federal taxes and a tax collection system; and federal development funds" (Art. 79.1, g). In addition, the Federal government is responsible for the country's foreign policy, foreign economic relations and defense, including the right to declare war (Art. 79.1, i-j).

The Federation Treaty signed on March 31 is based in large part on Section 4 of the March draft. There are, however, some significant omissions, above all provisions on secession and redistricting. In addition, the treaty simply states that ownership of natural resources, the distribution of profits from exports, and questions of taxation/subsidies will have to be worked out through enacting legislation by both the federal and local governments (Art. 3.3). Moreover, it merely stipulates that jurisdictional disputes will be resolved by the Constitutional Court (Art. 6.2).

## EXECUTIVE-LEGISLATIVE RELATIONS

The RSFSR's 1978 Constitution provided for a bicameral legislature (the Supreme Soviet), a chairman of the Presidium of the Supreme Soviet as head of state, and a Council of Ministers formally subordinated to the legislature. This arrangement was revised on several occasions in the Gorbachev era. First, the RSFSR established a "two-floor" parliament in 1990 in which a non-standing Congress of People's Deputies elected a standing, bicameral Supreme Soviet. The Congress then voted to create a new post of RSFSR president, a position Yeltsin assumed on July 10, 1991, after his June electoral victory.

In the following months, Yeltsin moved quickly to strengthen his presidential powers at the expense of the USSR executive, the RSFSR legislature, and local governments. He assumed control of many formerly Soviet institutions, appointed special presidential representatives (*predstaviteli prezidenta*) to monitor compliance with his decrees at the local level, and appointed local "governors" (the so-called *gubernatory*) to head local executive organs. Most importantly, in November the Congress granted him the right to rule by decree through the end of 1992.<sup>40</sup>

Not only his conservative opponents but many democrats interpreted these moves as confirmation of Yeltsin's authoritarian tendencies.<sup>41</sup> As a result, executive-legislative relations deteriorated, despite the show of unity during the August events. In fact, the delegates to the Congress of People's Deputies had been elected to a five-year term in March 1990, when the Communist Party still controlled most of the levers of power, and the Congress therefore included many conservatives who had almost managed to impeach Yeltsin at the beginning of the year.<sup>42</sup> Thus, Yeltsin and his supporters made it clear that they believed that Russia needed a strong executive during the transition, especially given the legislature's conservative character.

39 Note that this meant diminished weight in the Federation Assembly for the republics relative to the October draft. Under the October draft, the republics have 50 percent of the total number of representatives (60 out of 120).

40 See Aleksandr Rahr, "Yeltsin Sets Up New System for Governing Russia," *Report on the USSR*, no. 34 (August 23, 1991), pp. 9-12; Alexander Rahr, "Changes in the Yeltsin-Gorbachev Relationship," *Report on the USSR*, no. 36 (September 6, 1991), pp. 35-37; and Darrell Slider, "The CIS: Republican Leaders Confront Local Opposition," *RFE/RL Research Reports*, no. 10 (March 6, 1992), pp. 7-11.

41 See Julia Wishnevsky, "Russia: Liberal Media Criticize Democrats in Power," *RFE-RE Research Reports*, vol. 1, no. 2 (January 10, 1992), pp. 6-11; and Vera Tolz and Elizabeth Teague, "Is Russia Likely to Turn to Authoritarian Rule?," *RFE/RL Research Report*, vol. 1, no. 4 (January 24, 1992), pp. 1-8.

42 This is true of local legislatures (*soviets*) throughout the country. Gennady Burbulis, then Yeltsin's first vice-prime minister, has described them as "historically the last link with the totalitarian past" (*Moscow News*, no. 14, 1992, p. 6).



Even if this had not been the case, there would have been difficulties in the existing relationship. The Congress possesses considerable powers, including the power to change the existing, anomalous constitution. However, it meets only two or three times per year, making governance in the interim difficult. Moreover, the Congress lacks an administrative apparatus, is composed of non-professionals, and lacks structured political parties (see below). As a result, its sessions have been cluttered and confused, leading to the passage of numerous contradictory regulations and constitutional amendments.

Rumyantsev and the Working Group recognized these problems and wanted to create a more coherent and professional legislature. Above all, they hoped to eliminate the legislature's two-floor structure, creating a single, standing body of professional politicians supported by competent staff. They agreed, however, with the conventional wisdom in Moscow that Russia's traditions and the exigencies of the transition required a strong president, albeit one constrained by legislative oversight. Nevertheless, the Working Group realized that political realities might preclude getting the legislative-executive relationship they wanted. A substantial bloc of delegates opposed Yeltsin and a strong president, and the legislature might well object to any scheme that would call for its own dissolution prior to the expiration of its current term in 1995.

Nevertheless, all the Constitutional Commission's drafts have provided for a restructured legislature and a president to serve as both head of state and head of government. According to the March 12, 1992 draft, the president is popularly elected to a five-year term (Art. 95.4). Presidential powers include the right to issue decrees (*ukazy*), to appoint the government, to declare states of emergency in accordance with enacting legislation, to conduct foreign policy, to negotiate treaties and to declare war in the event of attack (Art. 96, 97). The president is also designated Supreme Commander (Art. 96.k) and head of the Defense Council (Art. 103.1).

As for the legislature, it is a bicameral, standing body, with both houses elected simultaneously to four-year terms (Art. 87). One house, the State Duma, consists of 450 deputies with representation

based on size of population. As noted earlier, the other house, the Federation Assembly, is made up of two delegates from each republic, *oblast*, *krai*, and autonomous *oblast*, and one representative from each autonomous *okrug*.<sup>43</sup> The Supreme Soviet is the "supreme" legislative body (Art. 86), although the president's power to issue decrees undermines this formal right. It has the right to approve or reject the federal budget, to ratify treaties, to decide "questions of war and peace," and to declare general or partial mobilizations (Art. 88, 89). In addition, the Supreme Soviet has the power to amend the constitution through a two-thirds vote in each house (Art. 136). Curiously, the draft stipulates that the Supreme Soviet controls the money supply (Art. 88.g) and the Central Bank (Art. 123).

Controversy has focused on control over the government and the president's veto powers. All drafts have provided the Supreme Soviet with the right to veto ministerial appointments. However, the legislature's power to remove government ministers has varied considerably. In the October draft, the Supreme Soviet was granted the right to bring down the entire government through a majority vote of no-confidence in both houses. This would almost certainly have led to blocked government. The Working Group tried to ameliorate this problem in its March 2 draft by giving Parliament the power to remove the prime minister but only through a two-thirds vote in both houses, while other ministers could be removed on an individual basis through a majority vote. However, a major change came with the March 12 draft, which empowered the Supreme Soviet to call on the president to fire any minister. The president would then have the right to appear before Parliament and defend the minister. A majority vote in both houses would then require the president to dismiss the minister nevertheless (Art. 102.4). As for veto powers, earlier drafts had required a two-thirds vote in both houses for an override. In the March 12, 1992 draft, however, the president has the right to send legislation passed by both houses back to Parliament for reconsideration, although both houses could override the veto through a simple majority vote (Art. 92.5).

Finally, a word about the Russian Federation's electoral system. Currently the Federation has a single-member district, two-round system with a run-off between the two front contenders if no can-

43 As noted earlier, representation in the Federation Assembly has changed between drafts. So, too, has the size of the State Duma, which prior to the published March 12, 1992 draft was set at 300.



didate wins a majority in the first round. Given time and iterative competitions, this arrangement could prove very constraining on the number of parties represented in Parliament. For the moment, however, competition has yet to structure the party system or force parties to act responsibly before their electorates—indeed, rather than parties in the Western sense, Russia has numerous overlapping parliamentary fractions that form and reform as deputies see fit. There is, however, talk of moving to a proportional representation (PR) system with a relatively low threshold of 5 percent, an arrangement that would be far less constraining on the number of parties.

Advocates of a PR system argue that the existing electoral arrangement favors the *nomenklatura*, because it rewards incumbents and the well-organized. This might well be true—a PR, low-threshold system would have fewer entry costs for new players. Although it might facilitate efforts to unseat the *nomenklatura* in the short run, a moderate- to low-threshold PR system would do so at the expense of parliamentary coherence. Moreover, should a strong presidential system be adopted, Russia's political parties, like those in the United States, would lack incentives to impose discipline on their deputies, because preserving the government would not depend on maintaining a parliamentary majority. As a result, the Russian Parliament would likely be populated by numerous and undisciplined parties, making its constructive capacity all the feebler, while confusing and alienating the electorate (as has already occurred in Poland and Czechoslovakia).

To sum up, the March 12 draft makes the president responsible for putting together a government but grants the legislature the power to reject or dismiss individual ministers through a simple majority vote. This accords Parliament considerable obstructionist powers, something they would likely take advantage of given the president's ability to issue *ukazy* without legislative approval and Russia's unstructured party system. If Russia adopts a PR electoral system with a modest or low threshold, the fractiousness and obstructionist powers of the

legislature will persist. Reportedly, Yeltsin's draft attempts to deal with this by granting the president more powers (possibly by returning to the provisions in the March 2 draft in which both a veto override and bringing down the prime minister require a two-thirds vote in both houses).

To date, the debate in Moscow on democratic engineering has been rather unsophisticated. There has been little discussion of the rigidity of presidential systems which make the removal of the chief executive in mid-term almost impossible without bringing down the regime. A strong president will reinforce Russia's tradition of *vozhdizm* (loosely, "cult of the leader") and increase the concentration of power (what happens if Yeltsin dies?). Likewise, appreciation of the difficulty of parliamentary government in the absence of a structured party system is limited. And least of all has there been serious discussion of the importance and effects of electoral laws.<sup>44</sup> In short, while the new Russian government has solicited the expertise of Western economists, constitutional lawyers, experts on the judicial reform, and human rights specialists, they have received very little advice from political scientists about the intricacies of democratic engineering.<sup>45</sup>

## PROSPECTS FOR THE RUSSIAN CONSTITUTION

In the weeks since the closing of the April Congress, Yeltsin has repeatedly expressed his disgust with the Russian legislature and, despite earlier assurances to the contrary, he has indicated that he will proceed with a national referendum on a new constitution.<sup>46</sup> Given that Congress alone has the right to amend or annul the existing constitution, adopting a new constitution through a referendum would in itself be unconstitutional.<sup>47</sup> Even more serious challenges to the rule of law by Yeltsin are possible, however. Should a referendum fail to win popular approval, Yeltsin might move to dissolve the legislature and establish a (presumably temporary) presidential dictatorship. Alternatively, he

44 Many of those I talked to about the subject, including putative "experts," seemed to think that the number of parties in Western democracies is determined by law.

45 No doubt this is both because "Sovietologists" have had little cause to acquire expertise on these matters, and because the study of constitutions and formal institutions has long been out of fashion in Western political science (see Giovanni Sartori, "Undercomprehension," *Government and Opposition*, Autumn 1991, pp. 391-400). As a result, the critical mass of political scientists qualified to advise the Russian government is lacking.

46 See, for example, *Moscow News*, no. 19, 1992, p. 2.

47 Yeltsin has encouraged his supporters to begin collecting the one million signatures needed to hold such a referendum, a rather curious bow to formality given the fact that adopting a new constitution on the basis of a referendum would itself be unconstitutional. Gathering these signatures will take some time, and thus it is unlikely that a referendum could be held before the Congress's next session in the fall. As a result, Yeltsin is reportedly going to ask the Supreme Soviet to amend the law on referenda and allow him to call for a referendum at his own initiative.



might dissolve Parliament peremptorily, waiting to hold a referendum or possibly a constitutional convention until some sort of economic, social, and political equilibrium is established.<sup>48</sup> All three possibilities would compel Yeltsin to disband Russia's fledgling Constitutional Court and confront democratic governments abroad with the difficult choice of supporting Russia's first democratically-elected leader or condemning a violation of the rule of law.

Certainly Yeltsin has already demonstrated his preparedness to ignore legal niceties if circumstances warrant.<sup>49</sup> He could justify such a move by arguing that the existing legislature is obstructing economic reform and democratic consolidation. Defenders of the Constitutional Commission's draft believe that these dangers can be circumvented only if the Supreme Soviet and the Congress of People's Deputies make clear their intention to adopt the draft at the next session of Congress. While admitting its imperfections, they point out that the Commission's draft is the product of numerous political compromises that make it less likely to polarize further the elite than any of the alternatives.<sup>50</sup> And they also point out that both Yeltsin and Khasbulatov, as chairman and vice-chairman of the Constitutional Commission, have played important roles in shaping its outcome.<sup>51</sup>

It is far from clear, however, that moderation and compromise by Yeltsin and the supporters of liberal democracy are either possible or warranted given the enormous difficulties Russia is facing. Politically, an alliance of "national patriots" is drawing support from communist ideologists, *nomenklatura* opportunists, defenders of the military-industrial complex, quasi-fascists, and *gosudarstvenniki* (democrats who favor a strong Russian state). At the same time, the coalition of democratic forces

that defeated the putschists in August and brought down the USSR has splintered.<sup>52</sup> It may be that a measure of liberal-democratic demagoguery is needed if Yeltsin is to remain on the political offensive and avoid the fate of Gorbachev and other "centrists" in post-communist Eastern Europe.<sup>53</sup> As this suggests, political choices made in the coming months will determine the constitution's immediate fate.

It may be, however, that more deeply-rooted structural factors will thwart the institutionalization of any democratic constitution in the medium run, regardless of its content. In the first place, the economy is almost certainly to worsen before it improves—a budget austerity program will be catastrophic for labor, but the alternative is accelerating inflation, making currency convertibility and economically-rational structural adjustment impossible. So, too, will the institutional conflicts within the Russian state persist (e.g., between the executive and legislative branches at all levels, and between the center and the periphery). At the moment, Russia remains in a state of generalized "multiple sovereignty" in which the "war of laws" continues despite the collapse of the USSR. These internal state tensions will only increase once Russia follows Eastern Europe and takes up in earnest the myriad questions of lustration—that is, whether to bring certain officials of the *ancien régime* to trial, whether to ban Communist Party members or former KGB officials from public office, what to do about informers and the KGB files, and so on.<sup>54</sup>

Finally, serious ethnic tensions and separatist pressures are likely to persist. This is true for at least six reasons. First, there is the simple fact that Russia has a large and diverse minority population, and that many of its minority People's consciousness of

48 On convening an All-Russian Constitutional Convention, see, for example, the interview with Yuri Afanasyev, *Moscow News*, no. 11, 1992, p. 11. Popov and Sobchak have also expressed support for such a move.

49 On the legality of the collapse of the Soviet Union, see Carla Thorson, "Constitutional Issues Surrounding the Coup," *Report on the USSR* no. 36 (September 6, 1991), pp. 31-33; and Carla Thorson, "The Collapse of the Constitutional Order," *Report on the USSR*, no. 40 (October 18, 1991), pp. 15-18. Yeltsin's critics have also pointed out that the final nails in the USSR's coffin—the Minsk and Alma Ata agreements—were driven in illegally by a small group of republic leaders, many of whom lacked democratic legitimacy (see, for example, Aleksandr Tsipko, "The Drama of Russia's Choice," *Izvestiya*, October 1, 1991, translated in *CDSP*, vol. 43, no. 39, pp. 1-4).

50 Indeed, they note that it continues to draw fire from both the left and right, which they cite as evidence of its even-handedness. Critics, however, cite its compromise character as a major drawback (see Burbulis's comments in *Moscow News*, no. 14, p. 6).

51 I should note that Romyantsev has become something of a problem for the draft's prospects. He is a rather strong-willed, ambitious, and charismatic character who has been quite outspoken in defense of the prerogatives of the Russian center. As a result, he is not well liked by the autonomies. The fact that the Romyantsev draft comes out of the discredited Parliament may also undermine its popularity. One factor influencing Yeltsin's decision to offer his own draft may therefore have been that winning popular approval for a new constitution would be easier if it were drafted by his own team, even given only limited substantive differences.

52 See Alexander Rahr, "Challenges to Yeltsin's Government," *RFE/RL Reports*, vol. 1, no. 9 (February 28, 1992), pp. 1-5.

53 See the interesting argument in Stephen Sestanovich's "The Hour of the Demagogue," *The National Interest*, no. 25 (Fall 1991), pp. 3-15.

54 On lustration in Eastern Europe, see "East Europe Opens Hunting Season on Ex-Communists," *Washington Post*, December 28, 1991; Aryeh Meier, "Watching Rights," *The Nation*, January 6/13, 1992, p. 9; "The Perils of Lustration," *New York Times*, January 7, 1992; and "Eastern Europe's Past: The Complexities of Justice," *The Economist*, March 21, 1992, pp. 21-23. On lustration in Russia, see Julia Wishnevsky, "Russians Gripped by 'Court Fever,'" *RFE/RL Research Reports*, vol. 1, no. 10 (March 6, 1992), pp. 1-6.



a territorially-distinct ethnic homeland has been reinforced by the country's tradition of "ethnic federalism." This, together with the considerable cultural distance between these minority populations, would make for severe political strains, even in the absence of massive economic restructuring. Second, Russia's administrative divisions no longer make a great deal of ethnic sense; many ethnic groups lack administrative recognition, while many of those that are recognized constitute a minority in their administrative homelands. Third, there are numerous incentives today for local governments to champion economic autarky ("the center shall not appropriate our product!"), particularly in areas rich in natural resources (e.g., Tatarstan and the North Caucasus with their oil, Yakutia with its diamonds and gold, and indeed Siberia generally). Fourth, the traditional *nomenklatura* can best preserve its position by appealing to nationalism, thereby using nationalism as its political parachute.<sup>55</sup> Fifth, there is the mundane but serious problem of attempting to govern from the center such a huge country with an extremely poor communication and transportation infrastructure.<sup>56</sup> And finally, there is the deeply ambiguous legacy of the country's Tsarist and Soviet imperial past.<sup>57</sup>

While the signing of the Federation Treaty helped Yeltsin sidestep a political disaster at the April Congress, it was a compromise that overcame many contentious issues by avoiding them. Additionally, the treaty's long-term value is attenuated by the fact that most of the regional governments that signed it lack democratic legitimacy. Moreover, Moscow has already entered into bilateral agreements with numerous local governments on hard currency earnings, ownership of land and natural resources, contributions to the federal budget, and federal investment, thereby undermining the treaty's purpose of establishing stable and

uniform relations between the center and the localities.<sup>58</sup> Indeed, these bilateral agreements will set precedents that will likely induce other local governments to up their own demands on the center. Most worrying, however, is the possibility that Russians will become increasingly intolerant of minorities as their resentment grows at being treated like foreign occupiers in areas they have long assumed to be part of Mother Russia.<sup>59</sup>

While a new federation structure might mitigate these tensions, it is far from clear what that federation structure should be. Some form of ethnic federalism is no doubt the only politically acceptable option. Whether it can keep together a country as large and diverse as Russia remains to be seen.<sup>60</sup> More fundamentally, the dilemma is that the principles of liberal individualism are at odds with the collective rights of ethnic groups—reconciling the rights of the Russians in Tatarstan while protecting Tatar culture and traditions is no easy task.

For all these reasons, it is not inconceivable that ten years from now we will see a significantly truncated Russia. Most likely is the secession of part or even all of the North Caucasus (a development that most Russians would accept with relative equanimity). Likewise, the republics bordering on Mongolia may go their own way. Considerably less likely is the secession and independence of Tatarstan or Bashkortostan. Although the titular peoples in these republics are Muslim and Turkic-speaking, they are located in the heart of Russia and along the lines of communication with Siberia. Moreover, they have very large Russian populations and have been part of Russia since the conquest of Kazan in 1552. Thus, any government in Moscow, democratic or otherwise, would find it very difficult to accept their independence. Less likely still is the secession of other former autonomies where population density is low, Russians form a substantial majority, and nation-state consciousness is weak.

55 There is an important difference between the center-periphery relations in the Gorbachev era and center-periphery in the new Russia. Whereas previously it was relatively easy for separatists to clothe themselves in democratic garb, it has become more difficult now that the authorities at the center have greater democratic legitimacy than those in the localities.

56 The flavor of these problems has been suggested by Galina Starovoitova as follows: "It is not only that telephone communications work badly and there is not enough fuel for aircraft. The power vertical is being torn apart. I get a call from the chief administrator of Nizhny Novgorod; the prices of oil products have soared, although the government promised this would not happen yet. A phone call from Buryatia: serious obstacles in implementing land reform. I tell them this is not my area of competence. They reply: we can't reach the right people and you pass this over..." (*Moscow News*, no. 3, 1992, p. 3).

57 As Aleksandr Tsipko has bluntly put it: "The point is that the RSFSR has neither historical nor ethnic legitimacy" ("Crisis of Russia's Statehood," *Rossiia*, July 6-12, 1991, translated in *CDSP*, vol. 43, no. 28, p. 7).

58 See, for example, *Moscow News*, no. 11, 1992, p. 5. At the end of last year Romyantsev suggested that Moscow might have to afford some of the autonomies the special status of "freely associated states." How Moscow could justify doing so to some and not others is difficult to see.

59 This resentment will likely intensify if anti-Russian discriminatory practices increase in the former Union republics (e.g., Ukraine, the Transdnestr, or the Baltics).

60 The example of India is hardly reassuring here.



In sum, economic, institutional, and ethnic stresses are likely to persist in Russia for years to come, regardless of how Yeltsin manages his immediate problems. A massive restructuring of the economy, accompanied by widespread layoffs and worker retraining, must be implemented to end Russia's economic travails. And some sort of democratic legitimation for the Russian Federation as a political community must be affirmed or constitutional democracy will remain precarious. These structural pressures, combined with the absence of a unifying national ethic in the moral vacuum left by communism, account for the widespread angst among Russian intellectuals about Russia's future, an angst that extends to many putative democrats.<sup>61</sup> At a practical level, Russia's identity crisis is reflected in the debate over which of Russia's myriad problems to tackle first. This debate has witnessed a growing number of democrats stand what had been conventional wisdom on its head by making a neo-Huntingtonian argument that economic reform and democratic consolidation are dependent on the restoration of political order and the

institutionalization of the state rather than vice versa.<sup>62</sup> Indeed, some even suggest that this may require the use of a "strong hand" (read, "force") and the temporary sacrifice of democracy to save the Russian state.<sup>63</sup>

One can doubt both the efficacy of such an approach and the very existence of a "strong hand" to use in defense of "order." Indeed, the real risk is that some sort of fascist-like nationalism will unify the nation by mobilizing it against some internal or external enemy. Alternatively, Russia may simply fracture. If neither of these grim scenarios transpires, Russia will at some point reach a stage where a democratic, federal constitution takes root. If the constitution is well designed, it may then contribute to the long-term consolidation of the Russian state and Russian democracy. If it is not, it may undermine them.

*Edward W. Walker is a postdoctoral fellow at The Harriman Institute. His dissertation, which he defended last year, is on the origins of perestroika.*

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61 See Aleksandr Tsipko, "The Drama of Russia's Choice"; Andranik Migranyan, "Can Yeltsin's Russia Survive?," *Moscow News*, no. 40, p. 8; the interview with Tsipko, "If the Nation Doesn't Recognize the Value of the State, It Is Dangerously Ill," *Komsomolskaya pravda*, January 14, 1992, translated in CDSP, 44, no. 6, pp. 12-14; and Vera Tolz and Elizabeth Teague, "Russian Intellectuals Adjust to Loss of Empire," *RFE/RL Research Reports*, vol. 1, no. 8 (February 21, 1992), pp. 4-8.

62 As Yevgeny Ambartsumov put it in discussing the numerous challenges to Russia sovereignty: "However, there are certain limits beyond which failure to check unlawful activities leads to disintegration of the state. We are now approaching the limit, I'm afraid" (*Moscow News*, no. 9, 1992, p. 3). Yeltsin has repeatedly made this same point. As he stated last November: "There is a point beyond which we cannot go under any conditions. This point is Russia's territorial integrity and its state and legal unity" ("Address of Boris Nikolayevich Yeltsin, President of the RSFSR, at the Fifth Congress of People's Deputies," *Moscow Russian Television Network*, October 28, 1991, reprinted in FBIS-SOV, October 29, 1991, p. 54).

63 Yeltsin has reportedly commissioned IMEMO to do a study of the consequences of establishing a temporary dictatorship and how best to present such a move to the people (*Kommersant*, no. 20, 1992, as described in *RFE/RL Daily Reports*, March 26, 1992).







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